

SENATE BILL 453

By Bell

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 8; Title 36; Title 37; Title 38; Title 39; Title 40
and Title 41, relative to witnesses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, is amended by adding the following
as a new chapter:

40-21-101.

There is established the Tennessee witness relocation and assistance program.

40-21-102.

As used in this chapter:

(1) "Credible evidence" means evidence leading a reasonable person to
believe that substantial reliability should be attached to the evidence;

(2) "Political subdivision" means any city, town, municipality, county,
including any county having a metropolitan form of government, or other legally
authorized local governmental entity with jurisdictional boundaries;

(3) "Protection" means formal admission into a witness protection
program established by this chapter memorialized by a written agreement
between local or state prosecutors and the witness; and

(4) "Witness":

(A) Means a person who has been summoned, or is reasonably
expected to be summoned, to testify in a criminal matter, including grand
jury proceedings, for the state whether or not formal legal proceedings

have been filed. Active or passive participation in the criminal matter does not disqualify an individual from being a witness; and

(B) Includes family, friends, or associates of the witness who are deemed by local or state prosecutors to be endangered.

40-21-103.

The office of the attorney general and reporter shall administer the Tennessee witness relocation and assistance program. In a criminal proceeding within this state, when the action is brought by local or state prosecutors, where credible evidence exists of a substantial danger that a witness may suffer intimidation or retaliatory violence, the office of the attorney general and reporter shall reimburse state and local agencies for the costs of providing witness protection services.

40-21-104.

(a) The office of the attorney general and reporter shall give priority to matters involving:

- (1) Organized crime, as described in title 39, chapter 12, part 2;
- (2) Criminal gang offenses, as defined in § 40-35-121(a)(3)(B);
- (3) The illegal sale, delivery, or manufacture of a controlled substance or controlled substance analogue, as prohibited in §§ 39-17-417 and 39-17-454;
- (4) Terrorism, as described in title 39, chapter 13, part 8;
- (5) Human trafficking, as defined in § 39-13-314; and
- (6) Cases involving a high degree of risk to the witness.

(b) Special regard must also be given to the elderly, the young, the infirm, the disabled, victims of assault and domestic violence, victims of hate incidents, as described in § 40-35-114(17), and victims of political violence or harassment, as described in § 39-17-309.

40-21-105.

The office of the attorney general and reporter shall coordinate the efforts of state and local agencies to secure witness protection, relocation, and assistance services and then reimburse those state and local agencies for the costs of the services that the office of the attorney general and reporter determines to be necessary to protect a witness from bodily injury, assure the witness's safe transition into a new environment, and otherwise to assure the health, safety, and welfare of the witness. The office of the attorney general and reporter shall reimburse the state or local agencies that provide witnesses with any of the following:

- (1) Armed protection or escort by law enforcement officials or security personnel before, during, or subsequent to, legal proceedings;
- (2) Physical relocation to an alternate residence;
- (3) Housing expenses;
- (4) Appropriate documents to establish a new identity, including documentation created in coordination with federal authorities;
- (5) Transportation or storage of personal possessions;
- (6) Basic living expenses, including food, transportation, utility costs, and health care;
- (7) Support, advocacy, and other services to provide for witnesses' safe transition into a new environment; or
- (8) Other services as needed and approved by the office of the attorney general and reporter.

40-21-106.

The witness protection agreement must be in writing and must specify the responsibilities of the protected person that establish the conditions for local or state prosecutors providing protection. The witness shall agree to the following:

- (1) To testify at trial and provide information to all appropriate law enforcement officials concerning all appropriate proceedings if the witness, as defined by § 40-21-102, has the potential to testify;
- (2) To refrain from committing any crime;
- (3) To take necessary steps to avoid detection by others of the facts concerning the protection provided to that person under this chapter;
- (4) To comply with legal obligations and civil judgments against the witness;
- (5) To cooperate with reasonable requests of officers and employees of this state who are providing protection under this chapter;
- (6) To designate another person to act as agent for the service of process;
- (7) To make a sworn statement of outstanding legal obligations, including obligations concerning child custody and visitation;
- (8) To disclose any probation or parole responsibilities, and if the witness is on probation or parole; and
- (9) To regularly inform the appropriate program official of the witness's activities and current address.

40-21-107.

This state and its political subdivisions, and the respective officers and employees of this state and its political subdivisions, are not liable for a condition in the

witness protection agreement that cannot reasonably be met due to a witness committing a crime during participation in the program.

40-21-108.

Funds available to implement this chapter may be used for the following:

(1) To protect a witness where credible evidence exists that the witness may be in substantial danger of intimidation or retaliatory violence because of their testimony;

(2) To provide temporary and permanent relocation of witnesses and provide for their transition and well-being into a safe and secure environment; and

(3) To pay the costs of administering the program.

40-21-109.

The office of the attorney general and reporter shall issue appropriate guidelines and may promulgate rules to implement this chapter. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The guidelines must include:

(1) A process whereby state and local agencies shall apply for reimbursement of the costs of providing witness protection services; and

(2) A twenty-five-percent match that is required of local agencies. The office of the attorney general and reporter may also establish a process through which to waive the required local match when appropriate.

40-21-110.

This state and its political subdivisions, and the respective officers and employees of this state and its political subdivisions, have immunity from civil liability for a decision declining or revoking protection to a witness under this chapter.

40-21-111.

Information relating to a witness participating in the program established pursuant to this chapter is confidential and not subject to disclosure under the open records law, compiled in title 10, chapter 7, and, if a change of name has been approved by the program, the petition required by § 29-8-102 and the court's order shall be filed under seal.

40-21-112.

(a)

(1) A person or private entity shall not post on the internet the home address, the telephone number, or personal identifying information that discloses the location of a witness or witness's family member who is participating in the witness relocation and assistance program (WRAP) with the intent that another person imminently use that information to commit a crime involving violence or a threat of violence against that witness or witness's family member.

(2) A violation of this subsection (a) is a Class A misdemeanor. Where the disclosure resulted in the bodily injury of the witness, or of a witness's family member who is participating in the program, the resulting harm is considered an enhancement factor when determining punishment imposed.

(b) Upon admission to WRAP, local or state prosecutors shall give each participant a written opt-out form for submission to relevant internet search engine companies or entities. This form must notify entities of the protected person and prevent the inclusion of the participant's addresses and telephone numbers in public internet search databases.

(c) A business, state or local agency, private entity, or person that receives the opt-out form of a WRAP participant pursuant to this section shall remove the participant's

personal information from public display on the internet within two (2) business days of delivery of the opt-out form, and shall continue to ensure that this information is not reposted on the same internet website, a subsidiary site, or any other internet website maintained by the recipient of the opt-out form. No business, state or local agency, private entity, or person that has received an opt-out form from a WRAP participant shall solicit, sell, or trade on the internet the home address or telephone number of that participant.

(d) A business, state or local agency, private entity, or person that violates subsection (c) is subject to a civil penalty for each violation in the amount of five thousand dollars (\$5,000). An action for a civil penalty under this subsection (d) may be brought by any prosecutor in the name of the people of the state of Tennessee and the penalty imposed is enforceable as a civil judgment.

(e) A witness whose home address or telephone number is made public as a result of a violation of subdivision (c) may bring an action seeking injunctive or declaratory relief in any court of competent jurisdiction. If a court finds that a violation has occurred, then the court may grant injunctive or declaratory relief and award the witness court costs and reasonable attorney's fees.

(f) Notwithstanding any other law, a witness whose home address or telephone number is solicited, sold, or traded in violation of subdivision (c) may bring an action in any court of competent jurisdiction. If a jury or court finds that a violation has occurred, then the court shall award damages to that witness in an amount up to a maximum of treble the actual damages, but in no case less than four thousand dollars (\$4,000).

(g) This section does not preclude prosecution under any other law.

40-21-113.

(a) The office of the attorney general and reporter shall establish a liaison with the United States marshal's office in order to facilitate the legal processes over which the federal government has sole authority, including, but not limited to, those processes included in § 40-21-105. The liaison shall coordinate all requests for federal assistance relating to witness protection as established by this chapter.

(b) The office of the attorney general and reporter shall pursue all federal sources that may be available for implementing this program. For that purpose, the office of the attorney general and reporter shall establish a liaison with the United States department of justice.

(c) The office of the attorney general and reporter shall establish procedures to maximize federal funds for witness protection services.

40-21-114.

The office of the attorney general and reporter shall make an annual report to the general assembly no later than January 1, 2023, and by January 1 for each subsequent year, on the fiscal and operational status of the program. This report must include the amount of funding sought by each county, the amount of funding provided to each county, and the amount of the county match.

40-21-115.

(a) The administrative costs of the office of the attorney general and reporter for the purposes of administering this chapter is limited to five percent (5%) of all costs incurred pursuant to this chapter.

(b) Subject to appropriations in the general appropriations act, appropriations to the witness relocation and assistance program from state funds shall not exceed fifty thousand dollars (\$50,000) in any fiscal year.

(c) To assist in the implementation of the purposes of this chapter, the office of the attorney general and reporter has the authority to solicit and receive grants, donations, and private funding. The funding may be used for the purposes listed in § 40-21-108.

(d) Program funds remaining unspent at the end of the fiscal year must be carried over into the budget of the program for the subsequent fiscal year, and must continue to be carried over from year to year until expended for the purposes prescribed in this chapter.

(e) The program shall not accept new witnesses if the program has no available funds.

SECTION 2. This act is not an appropriation of funds, and funds shall not be obligated or expended pursuant to this act unless the funds are specifically appropriated by the general appropriations act.

SECTION 3. For administrative and budgetary purposes and with the intent that the office of the attorney general and reporter establish the program and any necessary accounts, this bill takes effect July 1, 2021, the public welfare requiring it. This bill takes effect January 1, 2025, the public welfare requiring it, for all other purposes.